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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91224606
Party	Defendant InstaBrand LLC DBA InstaBrand
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Submission	Motion to Amend/Amended Answer or Counterclaim
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Date	05/10/2016
Attachments	INSTABRAND - 91224606 - Amended Answer.pdf(23051 bytes)

)	
INSTAGRAM, LLC)	
)	
Opposer,)	Opposition No. 91224606
)	
v.)	
)	
INSTABRAND LLC,)	
d//b/a INSTABRAND)	
)	
Applicant.)	
)	

In response to the Board’s Order of 23 April 2016, InstaBrand LLC d/b/a/ InstaBrand. (“Applicant”), as and for its Amended Answer to the Notice of Opposition of Instagram, LLC (“Opposer”), responds as follows:

1. Applicant is without knowledge and information sufficient to form a belief as to the allegations contained in Paragraph 1 of the Notice of Opposition and therefore denies same, leaving Opposer to strict proof thereof.

2. Admitted to the extent that the records of the U.S. Patent and Trademark Office show that Application Serial No. 86/169,772 was published in the Official Gazette on 30 June 2015 covering services described as “Advertisement network for the dissemination of information, namely, an online advertising network matching services for connecting brands to

celebrities, fashion bloggers, and social media leaders for promotion purposes;” in Class 35 and claiming a date of first use in commerce of 1 July 2013. Applicant denies that the mark of Application Serial No. 86/169,772 is INSTABRAND. The mark of Application Serial No. 86/169,772 consists of the following stylized word and design mark:



3. Applicant admits that the chart set forth in Paragraph 3 of the Notice of Opposition reflects numbers, dates and marks as allegedly reflected in USPTO records. Applicant is without knowledge and information sufficient to form a belief as to the remaining allegations contained in Paragraph 3 of the Notice of Opposition and therefore denies same, leaving Opposer to strict proof thereof.

4. Applicant is without knowledge and information sufficient to form a belief as to the allegations contained in Paragraph 4 of the Notice of Opposition and therefore denies same, leaving Opposer to strict proof thereof.

5. Applicant is without knowledge and information sufficient to form a belief as to the allegations contained in Paragraph 5 of the Notice of Opposition and therefore denies same, leaving Opposer to strict proof thereof.

6. Applicant is without knowledge and information sufficient to form a belief as to the allegations contained in Paragraph 6 of the Notice of Opposition and therefore denies same, leaving Opposer to strict proof thereof.

7. Applicant denies the allegation contained in Paragraph 7 of the Notice of Opposition.

8. Applicant denies the allegation contained in Paragraph 8 of the Notice of Opposition.

9. Applicant denies each and every allegation contained in Paragraph 9 of the Notice of Opposition.

10. Applicant denies the allegation contained in Paragraph 10 of the Notice of Opposition.

11. Applicant denies each and every allegation contained in Paragraph 11 of the Notice of Opposition.

12. Applicant denies the allegation contained in Paragraph 12 of the Notice of Opposition.

13. Applicant denies the allegation contained in Paragraph 13 of the Notice of Opposition.

14. Applicant admits that the registration of the mark of Application Serial No. 86/169,772 would constitute *prima facie* evidence of the validity of such registration, Applicant's ownership of the mark shown in Application Serial No. 86/169,772 and Applicant's exclusive right to use that mark pursuant to the provisions of 15 U.S.C. § 1057(b). All other allegations as set forth on Paragraph 14 are denied.

AFFIRMATIVE DEFENSES

By asserting these affirmative defenses, Applicant does not admit that it necessarily bears the burden of proof or persuasion for any of the defenses or issues raised therein. Moreover, at this time, Applicant has insufficient knowledge upon which to form a belief as to whether additional defenses are presently available to them. Applicant reserves its right to further amend

the Amended Answer to the Notice of Opposition to add, delete, or modify defenses based on legal theories which may or will be divulged through clarification of the Notice of Opposition, through discovery, or through further legal analysis of Opposer's position in this opposition. Subject to the foregoing, for its affirmative defenses in this action, Applicant hereby asserts and alleges the following:

FIRST AFFIRMATIVE DEFENSE

Applicant's mark is not confusingly similar to any of Opposer's marks.

SECOND AFFIRMATIVE DEFENSE

The extensive amount of third party use and registration of marks consisting of or incorporating the wording "INSTA" precludes Opposer from claiming the exclusive right to use and registration of the wording "INSTA."

THIRD AFFIRMATIVE DEFENSE

Opposer's claims for relief are barred because Opposer's INSTAGRAM mark is not famous.

FOURTH AFFIRMATIVE DEFENSE

Opposer's claims for relief are barred because Opposer's INSTAGRAM mark was not famous prior to the first use of Applicant's mark and thus not susceptible to dilution.

FIFTH AFFIRMATIVE DEFENSE

Opposer's claims for relief are barred because Opposer's INSTAGRAM mark was not famous prior to the filing date of Application Serial No. 86/169,772 for Applicant's mark.

WHEREFORE, Applicant prays that Application Serial No. 86/169,772 be allowed to proceed to registration, and that the Opposition be dismissed with prejudice.

Respectfully submitted,

INSTABRAND LLC,
d//b/a INSTABRAND

Date: 10 May 2016

By: /michael leonard/

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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing AMENDED ANSWER TO NOTICE OF OPPOSITION was served on counsel for Opposer, this 10th day of May 2016, by sending same via First Class Mail, postage prepaid, to:

Annie L. Albertson, Esq.
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/michael leonard/